

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY and  
MARA HVISTENDAHL,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

**COMPLAINT**

Plaintiffs THE NEW YORK TIMES COMPANY and MARA HVISTENDAHL, by and through their undersigned counsel, allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of an agency record in response to a FOIA request properly made by Plaintiffs The New York Times Company and Mara Hvistendahl (together, “The Times”) to the Office of the Inspector General (“OIG”), a component of the Department of Justice (“DOJ”).

**PARTIES**

2. Plaintiff The New York Times Company publishes *The New York Times* and [www.nytimes.com](http://www.nytimes.com). The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York, 10018.

3. Plaintiff Mara Hvistendahl is an investigative reporter with The New York Times Company.

4. Defendant is an agency of the federal government that has possession and control of the record that Plaintiffs seek.

**JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on Plaintiffs' place of business and is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available pursuant to 5 U.S.C. § 552(a)(6)(A).

**FACTUAL BACKGROUND**

8. On December 14, 2021, OIG published an investigative summary of a report finding impropriety by FBI officials during assignments abroad. "Investigative Summary: Findings of Misconduct by then FBI Officials for Soliciting, Procuring, and Accepting Commercial Sex while On FBI Assignment Overseas, Lack of Candor to the OIG, and Related Misconduct," U.S. Department of Justice Office of the Inspector General (Dec. 14, 2021), <https://tinyurl.com/bd5ak3zv>.

9. According to the summary, OIG found that five FBI officials solicited or procured commercial sex overseas, "four of those officials lacked candor about their interactions with prostitutes and other misconduct during OIG compelled interviews and compelled polygraph examinations," and "one of those officials made false statements" to OIG. *Id.* The report also made other findings of misconduct, the summary stated. *Id.*

10. OIG stated that it had "completed its investigation and provided its report to the FBI for appropriate action." *Id.*

11. OIG did not publish on its website the full-length report described in the investigative summary.

12. Plaintiffs submitted a FOIA request to the OIG on February 1, 2022 seeking a copy of the report (the “Request”). Request No. 22-OIG-083.

13. On October 12, 2022, OIG largely denied the request (the “Denial”), producing only two heavily-redacted pages from the 37-page report. *See* Exhibit A. OIG stated it was withholding the rest of the report pursuant to FOIA exemptions 6, 7(A), 7(C), and 7(E). *Id.*

14. Plaintiffs submitted an appeal of the Denial on January 9, 2023. Plaintiffs also appealed OIG’s denial of expedited processing. Appeal No. A-2023-00568.

15. On January 11, 2023, the DOJ denied Plaintiffs’ appeal of the denial for expedited processing.

16. On April 18, 2023, the DOJ denied Plaintiffs’ appeal from the Denial.

### **FIRST CAUSE OF ACTION**

17. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

18. Defendant is an agency subject to FOIA and must therefore release, in response to a FOIA request, any disclosable records in its possession at the time of the Request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

19. The Times administratively appealed Defendant’s denial of the Request. Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

20. Defendant is permitted to withhold records or parts of records only if one of FOIA’s enumerated exemptions apply.

21. No exemptions permit the withholding of the record sought by the Request.

22. Accordingly, The Times is entitled to an order compelling Defendant to produce records responsive to the Request.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

23. Declare that the record sought by the Request, as described in the foregoing paragraphs, is public under 5 U.S.C. § 552 and must be disclosed;

24. Order Defendants to provide the record to Plaintiffs within 20 business days of the Court's order;

25. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

26. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 25, 2023

/s/ Dana R. Green

Dana R. Green  
Legal Department  
The New York Times Company  
620 8th Avenue  
New York, NY 10018  
Phone: (212) 556-5290  
Fax: (212) 556-4634  
E-mail: dana.green@nytimes.com

*Counsel for Plaintiffs*